

## STATE OF DELAWARE THE COURTS OF THE JUSTICES OF THE PEACE 820 NORTH FRENCH STREET, 11TH FLOOR WILMINGTON, DELAWARE 19801

NORMAN A BARRON CHIEF MAGISTRATE TELEPHONE: (302) 571 - 6001

#### POLICY DIRECTIVE 84-090 (REVISED)

TO: ALL JUSTICES OF THE PEACE, STATE OF DELAWARE

ALL CLERKS OF THE COURT, JUSTICE OF THE PEACE COURTS

FROM: NORMAN A. BARRON

CHIEF MAGISTRATE

DATE: MAY 27, 1988

RE: THE PROCESSING OF BAD CHECK CASES

This Policy Directive rescinds Policy Directive 84-090, dated July 24, 1984, Policy Directive 84-090 (Supplement), dated August 22, 1985, and Policy Directive 84-090 (Second Supplement), dated September 12, 1985. The above-listed Policy Directives should be discarded and replaced by this Policy Directive.

Under date of July 22, 1985, Colonel Daniel L. Simpson issued General Order No. 63-85 which states as follows:

- "1. Effective August 1, 1985, the Division of State Police will no longer conduct a criminal investigation for checks or drafts drawn on non-sufficient accounts. The following conditions are exempted from the policy:
- A. Checks or drafts in amount of [\$500] or more.
- B. Numerous checks or drafts drawn by person(s) which suggest an unusual scheme or pattern of criminal conduct.
- C. Situations which, in the investigating officer's discretion, require investigative efforts.

- 2. Complaining parties are to be assisted in whatever way possible to help minimize the potential for accepting a non-sufficient draft.
- 3. Complaining parties are to be referred to the appropriate Magistrate Court to seek a civil remedy; the issuance of a criminal summons; or, in the merchant's option, collection by a professional debt collector.

Under date of July 22, 1985, Colonel Simpson issued a policy statement to General Order No. 63-85. This policy statement reads as follows:

- "1. For several years, the Division of State Police has entertained criminal investigations for violation of 11 Del.C., \$900 (non-sufficient checks or drafts). This practice has evolved into a situation where limited criminal investigative manhours were used for purpose of collecting the merchants' debt. Criminal prosecutions had and presently have little substantive effect.
- 2. Therefore, the attached general order is being implemented for more cost-effective allocation of the Division's resources.
- 3. After August 1, 1985, except as otherwise provided, all checks or drafts drawn on non-sufficient accounts are to be referred to a Magistrate Court or to a professional debt collector, whichever the complainant elects.
- 4. This policy change should not be construed as being a decriminalization of this type of activity but merely an alternative more expeditious method of dealing with these violations.
- 5. If any difficulties with this new policy should be encountered they should be directed to the field operations officer for consideration and resolution."

These referrals will presumably be with regard to those cases which do not fall within the exempted policy of paragraph 1. In other words, cases involving checks drawn on non-sufficient accounts where the amount is less than \$500 and where no unusual scheme or pattern is evident will be referred to the appropriate Justice of the Peace Court.

This Policy Directive is intended to set forth the position of the Courts of the Justices of the Peace with regard to General Order No. 63-85. Effective upon receipt of this Policy Directive, Justice of the Peace Court personnel should encourage bad check victims to process their cases criminally rather than civilly. Upon agreement to process the case criminally, the victim should be referred to the applicable Magistrate Court which handles criminal cases.<sup>2</sup>

Once a criminal referral is made, the complainant shall be required to complete an affidavit of probable cause, found as Exhibit B to the Complaint And Summons/Warrant. It is presumed that with regard to these cases, the police will no longer issue an incident report. Therefore, the requirement for such a report as found in paragraph 2 of Policy Directive 80-015, dated September 29, 1980, Requirement For The Issuance Of Warrants And Summonses is hereby waived.

In no case referred to the Court pursuant to General Order No. 63-85, should a warrant issue. Instead, in all such cases, a summons is the appropriate vehicle to bring the defendant before the Court for his/her initial appearance. Such summonses may be forwarded to the defendants' places of residence via regular

<sup>&</sup>lt;sup>2</sup>If the victim wishes to pursue the case civilly, he should be permitted to do so. Referral should be made to the applicable Magistrate Court which handles civil cases. Once at the applicable civil court, the complainant should be referred to 6 Del.C., \$3-806. See: Legal Memorandum 84-123, dated August 15, 1984.

<sup>&</sup>lt;sup>3</sup>See: Policy Directive 82-065 (Supplement), dated January 3, 1987, New Complaint/Delinquency Petition And Summons/Warrant.

mail. Should a defendant not respond to a summons, the summons should be turned into a warrant and forwarded to that police troop or agency which would have conducted the investigation and prosecution had police intervention been required.

Where the defendant responds to the summons, or where the defendant is arrested under a warrant, normal court practice shall apply. That is, an initial appearance shall be held so that the defendant may elect the trial forum. If the defendant elects the Justice of the Peace Court as the trial forum, an arraignment should follow the initial appearance. Any bases which do go to trial should be tried as any other bad check cases are tried.

You will recall that in December of 1987, the Bad Check Task Force, formed at the request of Senator Richard Cordrey, issued its Final Report. Contained therein were certain recommended amendments to our laws. These recommendations have recently been enacted into law; thus, an understanding of each is essential.

Senate Bill No. 335 was signed into law by the Governor on May 19, 1988. 66 <u>Del.Laws</u>, c. 253. This Bill amends subsection (a) of \$4206 of Title 11 by adding a new sentence to the end thereof. Eleven <u>Del.C.</u>, \$4206(a) now reads, with the amendment underlined for emphasis:

"(a) The sentence for a class A misdemeanor shall be fixed by the court and shall not exceed 2 years imprisonment and such fine and other conditions as the court may order; provided,

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See: Legal Memorandum 80-18, dated September 4, 1980, Bad Check Cases.

however, that the court shall require a person convicted of issuing a worthless check under \$900 of this title to make restitution to the person to whom the worthless check was issued. For purposes of this section, restitution shall mean the amount in which the check was written plus a service fee in the amount of \$30 for processing a worthless check, or a fee of \$50 for processing more than one worthless check issued by the same person."

The Synopsis explains the rationale behind the amendment:

"A person to whom a worthless check has been issued must expend time, money, and effort in processing the worthless check which includes the sending of a 10-day demand letter in cases of insufficient funds, and in filing a criminal complaint against the issuer and, in general, handling the prosecution of the issuer. Restitution in the amount of the check, therefore, does not totally compensate the victim. This Bill authorizes an additional service fee of from \$30 to \$50 to fully compensate the victim for this time and trouble spent in collecting that which is his due."

or \$50, be added to the amount of the check in arriving at the amount of restitution which shall be ordered paid to the victim by the defendant. The Court shall be responsible for ensuring that full restitution is paid to the victim. Commencing on July 1, 1988, the Clerks of the Court shall keep a record of restitution monies paid to victims of bad check cases irrespective of whether or not the Court collects the restitution

This refers to the situation where A writes either 1 check to B, in which event the \$30 service fee applies, or A writes 2 or more checks to B, in which event the \$50 service fee applies. The \$50 service fee does not apply to the case where A writes one check to B and one check to C. There, a \$30 service fee would be awarded to both B and C.

for the victim and irrespective of whether bad check case goes to final judgment.

\* \* \* \* \*

Senate Bill No. 336 was signed into law by the Governor on May 19, 1988. 66 <u>Del.Laws</u>, c. 251. This Bill adds a new subsection (c) to 11 <u>Del.C.</u>, \$855. The new subsection (c) reads:

"(c) When theft or any related offense is committed in violation of this title pursuant to one scheme or continuous course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the value of the property or services aggregated in determining whether the theft is a felony or misdemeanor. For purposes of this subsection, related offenses shall include, but are not limited to, violations of \$861, \$900, and \$903 of this title."

The Synopsis explains the rationale behind the amendment:

"This Bill authorizes the aggregation of different instances of theft or theft-related offenses involving different victims or multiple instances of theft or theft-related offenses involving the same victim but occurring different occasions into one felony charge. Without this consolidated theft statute, similar to one enacted in Maryland [Md.Ann.Code, Art. 27, 340(1) (5)], aggregation of such charges. presumably misdemeanor charges, into one felony charge is not permitted. This Bill would permit the bringing of a heavier felony charge against persons who commit multiple theft-related misdemeanors as a part of a scheme or continuous course of conduct. This Bill has the support of the Bad Check Task Force."

With this new law now in place, Court personnel should be on the look-out for multiple offenses committed by one defendant. Suppose three business persons appear at your Court, each seeking

<sup>&</sup>lt;sup>6</sup>The Court Administrator and the Fiscal Administrative Officer shall be responsible for setting up this recordkeeping process.

a bad check summons against the same person, each check having been written in the amount of \$200. The Court should refer the complainants to the applicable police agency which would ordinarily handle the investigation. The police agency will appear at a later date seeking a single court felony warrant against the issuer. The same scenario will arise in the case of a single business person with three separate checks each written in the amount of \$200.

\* \* \* \* \*

Senate Bill No. 337, as amended by Senate Amendment No. 1, was signed into law by the Governor on May 19, 1988. 66

Del.Laws, c. 252. This Bill adds a new section 900A to Title 11.

The new \$900A creates a First Offender's Program for certain bad check cases. It reads as follows:

"900A. Conditional discharge for issuing a bad check as first offense.

Whenever any person who has not previously been convicted of issuing or passing a bad check under Section 900 of this title or under any statute of the United States or of any state relating to the issuing or passing of bad checks pleads guilty to issuing or passing a bad check in violation of Section 900 of this title in an amount under \$500 at the time of his arraignment, the court without entering a judgment of guilt and with the consent of the accused may defer further proceedings and place him on probation upon terms and conditions, which terms and conditions shall include payment of full restitution in the amount of the check plus any reasonable service fee in connection therewith to the victim of the offense

<sup>7</sup>Remember, by the very words of General Order No. 63-85, the State Police will conduct criminal investigations for checks in the amount of \$500 or more, and for numerous checks drawn by a person which suggests a pattern of criminal conduct. Closed account cases are also impliedly encompassed within the DSP investigative parameters.

and payment to the state of any court costs associated with the offense. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him and shall simultaneously with said discharge and dismissal submit to the State Bureau of Identification Chapter 85 of this title pursuant to disposition specifying the name of the person and the nature of the proceedings against him which dispositional information shall be retained by the State Bureau of Identification in accordance with its standard operating procedures. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. There may be only 1 discharge and dismissal under this section with respect to any person and no person who is charged with multiple violations of Section 900 of this title is eligible for treatment as a first offender under this section."

The Synopsis explains the rationale behind the amendment:

"This Bill would allow persons who issue or pass bad checks and who have no prior bad check convictions an opportunity to be treated as first offenders without an adjudication of guilt when they agree to make good the check and to pay service fees and court costs at an early stage of the criminal proceeding, thus freeing up police and court time, expediting restitution and benefiting otherwise law-abiding citizens from being stamped with a criminal record."

The Bad Check FOP eligibility requirements are as follows:

- No prior bad check convictions;
- One check only; and,
- Check was written in amount of less than \$500.

The Bad Check FOP disposition must be made, if at all, at the time of the defendant's arraignment. Thus, it is essential for the Court to determine if the defendant is eligible for this conditional discharge. If eligible, the defendant must be willing to make full restitution in the amount of the check, plus

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the \$30 service fee pursuant to \$4206(a), plus Court costs in the amount of \$15, and this willingness must be expressed at the time of arraignment. 8 In fact, those willing to participate in the Bad Check FOP process should be encouraged to make full payment to the Court at the arraignment.

For those unable to make full payment at the time of their arraignment, the Court, in its discretion, may defer the case and place the defendant on Level I probation for a period which ordinarily should not exceed 30 days, with the condition that the defendant, within the probationary period, make full restitution, including service fee, to the victim, and that the defendant return to the Court at the end of said period on a date and time certain with written proof of payment of full restitution, including service fee, and with \$15 Court costs in hand. such cases, a Bail And Order To Appear form should, of course, be Those defendants successfully completing completed. conditions of probation should be discharged with their cases dismissed when they reappear at Court. For those who either fail to return or fail to meet the conditions of their probationary periods should, upon return to the Court, have guilty verdicts entered against them and sentenced as provided by law. 9

For purposes of dispositional reporting, the dispositional record of a defendant who successfully fulfills the conditions of

<sup>&</sup>lt;sup>8</sup>Of course, the arraignment must include completing and executing both sides of the Jurisdictional Form.

<sup>9</sup>See: 11 <u>Del.C.</u>, **\$4206(a)**, <u>infra</u>.

the Bad Check FOP option should read "Bad Check FOP discharge and dismissal."

NAB:pn

CC: The Honorable Andrew D. Christie
The Honorable Charles M. Oberly, III
Bugene M. Hall, Esquire
Colonel Clifford M. Graviet
Major Robert C. McDonald
Michael E. McLaughlin
Mario V. Spitelli
Members, Bad Check Task Force
File (P90(R))



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### POLICY DIRECTIVE 84-090 REVISED (SUPPLEMENT)

TO:

ALL JUSTICES OF THE PEACE, STATE OF DELAWARE

ALL CLERKS OF THE COURT, JUSTICE OF THE PEACE COURTS

FROM:

NORMAN A. BARRON

CHIEF MAGISTE

DATE:

SEPTEMBER 2.

RE:

THE APPROPRIATE COURT FOR THE FILING OF BAD CHECK CASES

In Policy Directive 84-090 (Revised), dated May 27, 1988, The Processing Of Bad Check Cases, it was stated at page 3 that "[u]pon agreement to process the case criminally, the victim should be referred to the applicable Magistrate Court which handles criminal cases." A question has arisen over the interpretation of that phrase vis-a-vis multiple offenses committed against one person or business. Let's frame the issue by way of a hypothetical:

#### Hypothetical

Hammer Hardware has stores at three locations in New Castle County: One is in Claymont, close to Court No. 15; the second is in New Castle, close to Court No. 11; and the third is in Middletown, close to Court No. 9. Bad check cases are handled out of the administration offices located within the New Castle store. In a given period, three checks were returned for insufficient funds having been passed at each of the 3 Hammer

Hardware stores. The check issuers all live within the vicinity of the stores which accepted the checks.

Donna White's job with Hammer Hardware entails the processing of bad checks. The issue posed is simply stated: Must Donna file the Claymont charge at Court No. 15, the New Castle charge at Court No. 11, and the Middletown charge at Court No. 9, or may Donna file all charges at the court most convenient for her, i.e. Court No. 11?

\* \* \* \* \*

There is no requirement that the charge be filed at the nearest available Magistrate Court from the place of the offense. In fact, we have seen that there is no constitutional or statutory requirement that the charge even be brought in the County in which the offense was committed. See Legal Memorandum 86-152, dated August 14, 1986, Venue In Criminal Cases.

From the above, we see that there is no requirement to file the Claymont Hammer Hardware bad check case in Court No. 15, etc. From a philosophical standpoint, victims of crime should be inconvenienced as little as possible in connection with their processing of cases. Thus, I conclude that Donna White of our

The "nearest available Magistrate" concept was confined to traffic cases. There, the statute, 21 <u>Del.C.</u>, \$703, was amended in 1982 obviating the "nearest available Magistrate" requirement. See House Bill No. 95, signed into law by the Governor on April 20, 1982. 63 <u>Del.Laws</u>, c. 221; Legal Memorandum 81-42 (Supplement), dated April 26, 1982, <u>Twenty-One Del.C.</u>, \$703 And The Nearest Available Magistrate Concept.

However, by Rule 14 of the Justice of the Peace Court Rules of Criminal Procedure, the prosecution (i.e., the trial) shall be had in the County in which the offense was committed.

hypothetical need only go to Court No. 11 for the filing of the 3 bad check cases. As per Policy Directive 84-090 (Revised), a summons is the appropriate vehicle in which to bring the defendant before the Court.

should a summons have to be turned into a warrant, it should be forwarded to the police troop or agency which would have conducted the investigation and prosecution had police intervention been required. Once the police arrest the defendant on the warrant, in the ordinary case, the defendant should be taken without unreasonable delay before the Court out of which the warrant issued. 4

One final note with regard to the hypothetical: Had the issuer of the 3 checks been the same person, you must remember that if the total of all 3 checks add up to \$500 or more, the

 $<sup>^3</sup>$ While this Policy Directive speaks directly to bad check cases, the same conclusion would apply with regard to other offenses.

Rule 2 of the Justice of the Peace Court Rules of Criminal Procedure authorize the police to take the offender "before either (1) the nearest available Justice of the Peace of the county in which the offense is alleged to have been committed, unless an available Justice of the Peace Court located in another county is closer to the place where the offense is alleged to have been committed, in which case the arresting officer may take the arrested person before said Court, or (2) for felonies or misdemeanors committed in New Castle County above the Chesapeake and Delaware Canal, before the Justice of the Peace Court located at the Multi-Purpose Criminal Justice Facility at Gander Hill during the normal hours of operations of said Court, or (3) before the Court out of which the warrant issued, in accordance with the command of the warrant." While choices are available to the police, when victim convenience is taken into account, the selection of the court out of which the warrant issued should be given primary consideration by the police.

charges can be consolidated into one felony count. See 11 Del.C., \$855(c); Policy Directive 84-090 (Revised), supra.

NAB:pn

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